IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Civil Writ Petition No. 201 (S/B) of 2005

Pradeep Kumar Saxena
S/o Sri P.D. Saxena
Posted as Executive Engineer in the
Office of Chief Engineer
Rural Engineering Service Department
Uttaranchal, Dehradun ….Petitioner

Versus

1. State of Uttaranchal through
   Secretary, Rural Engineering Service Department
   Govt. of Uttaranchal, Dehradun
2. Chief Engineer/Head of Department
   Rural Engineering Service Department
   Uttaranchal, Dehradun
3. Sri Kulshekhar Nagar
   In-Charge Superintending Engineer
   Rural Engineering Service Department
   Kumaon Circle, Nainital …..Respondents

Sri Manoj Tiwari learned counsel for the petitioner
Sri. K.P. Upadhyay, learned standing counsel for the state
Sri D.S. Patni, learned counsel for the respondent No. 3.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This writ petition has been filed by the petitioner seeking the following reliefs:-

A. To issue a writ order or direction in the nature of certiorari for quashing the order dated 07.07.2005 passed by the Respondent No. 1 (Annexure No. 8 to the writ petition)
B. To issue a writ order or direction in the nature of mandamus commanding the Respondent No. 1 to consider and appoint the petitioner as In-charge Superintending Engineer against available vacancy view of his seniority position amongst Executive Engineers serving in the Department.
C. To issue a writ order or direction in the nature of mandamus commanding the Respondent No. 1 to hold regular promotion exercise for filling the available vacancies on superior posts in the Department.

D. To issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

E. Award the cost of the writ petition in favour of the petitioner.

This writ petition has been admitted on prayer 'C' vide order dated 01.09.2005 which is quoted as under:-

"The petitioner is an Executive Engineer in the Rural Engineering Service Department of the Government of Uttaranchal. He has filed this writ petition mainly praying for quashing Annexure 8 order dated 07.07.2005 passed by the first respondent. As per Annexure 8 order dated 07.07.2005, the charge of Superintending Engineer, Rural Engineering Service Circle, Nainital was handed over to Sri K.S. Nagar, Executive Engineer, Rural Engineering Service Division, Nainital till a regular Superintending Engineer is posted or until further orders of the Government whichever is earlier. It is also stated in Annexure 8 order that Sri K.S. Nagar will not be entitled to any additional pay or allowances on account of the charge arrangement. The grievance of the petitioner is that he is senior to Sri K.S. Nagar in the cadre of Executive Engineer and therefore, it is wrong and illegal to give the charge of Superintending Engineer to Sri K.S. Nagar, while the petitioner continues to be only an Executive Engineer.

There is no merit in the contention of the petitioner. As per Annexure 8 order, the junior Sri K.S. Nagar has not been promoted to the higher cadre. In the absence of a regularly promoted Superintending Engineer, Sri K.S. Nagar who is serving as Executive Engineer in the Rural Engineering Service Division, Nainital is given charge of Superintending Engineer, Rural Engineering Service Circle, Nainital. The petitioner is not working as Executive Engineer in the Rural Engineering service Circle, Nainital. He is working as Executive Engineer in the office of the Chief Engineer, Rural Engineering Service Department at Dehradun. Hence, there is no occasion for the junior holding charge of Superintending Engineer and the senior working as Executive Engineer under the junior. It is also to be noted that Sri K.S. Nagar is not granted any additional pay or allowances on account of the charge arrangement. In giving such charge arrangement, it is not necessary to search for the senior-most Executive Engineer in the whole Department. Hence, the petitioner cannot have a legal grievance against Annexure 8 order. Therefore, the challenge against Annexure 8 order is liable to be rejected.

Another prayer in the writ petition is for a direction to respondent No. 1 to consider and appoint the petitioner as In-charge, Superintending Engineer against the available vacancy in view of his seniority position amongst Executive Engineers serving in the Department. The petitioner has no such enforceable legal right to be considered for giving charge of the post of Superintending Engineer. Such charge arrangements have to be made by the competent authority in the exigency of administration and for administrative reasons, however, ensuring that a senior is not forced to work under a junior even though the junior is only holding charge of the higher post. Hence, the second prayer of the petitioner also is liable to be rejected.

The third prayer in the writ petition is for a direction to the first respondent to hold regular promotion exercise for filling the available vacancies in the superior posts in the Department. The grievance of the petitioner is that instead of making regular promotions, the Department is resorting to the practice of giving charge to officers in the lower cadre. Prima facie, we are of the view that the respondents owe an explanation regarding the above grievance of the petitioner.

Hence, the writ petition is admitted only in respect of the prayer (C) in the writ petition.

Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal accepts notice for respondents Nos. 1 and 2 Mr. D.S. Patni, Advocate accepts notice for respondent No. 3. Counter affidavit, if any, be filed within one month. Rejoinder affidavit, if any, be filed within one week thereafter.

Post in the orders' list on 17th October, 2005."

Sri D.S. Patni, learned counsel for the respondent No. 3 has submitted that prayer 'C' may be granted to the petitioner and his case shall be considered whenever the regular promotion is made. Therefore, we issue a direction to hold the selection for regular promotion within a period of one month from the date of production of certified copy of this order.

In view of the above, the petitioner is dispose of finally.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

20.03.2006

R. Dang